

March 3, 2016

D. Benjamin Snyder, Esquire
Department of Justice
102 West Water Street
Dover, Delaware 19904

John R. Garey, Esquire
48 The Green
Dover, Delaware 19901

Re: *State v. Ranee M. Laface*
I.D. No. 1502014686
Letter Order on Defendant's Motion to Suppress

Gentlemen:

Before the Court is Defendant Ranee Laface's ("Laface") motion to suppress evidence obtained as the result of her arrest for Driving Under the Influence ("DUI"). Laface argues that Tfc. Campbell of Troop 3 of the Delaware State Police lacked probable cause to make the arrest. For the following reasons, the Defendant's motion to suppress is denied.

The following facts were presented to the Court. Early in the morning of February 25, 2015, Tfc. Campbell responded to a single motor vehicle accident on Forrest Avenue in Dover, Delaware. Laface was driving to her brother's house after leaving Irish Mike's Pub in Dover, Delaware and drove into a ditch after swerving to avoid a fox. She was standing outside of the vehicle when Tfc. Campbell arrived at the scene. Laface told Tfc. Campbell that she was cold and asked to sit in the patrol car, and Tfc. Campbell agreed to the request. Tfc.

Campbell testified that Laface was crying, her eyes were watery and bloodshot, and she appeared intoxicated. At some point during the crash investigation, Tfc. Campbell detected a strong odor of alcohol on Laface's breath. When questioned about the odor of alcohol, Laface admitted she had consumed three beers and two shots before driving her vehicle. She also admitted she did not have a valid driver's license.

Laface agreed to perform standardized field sobriety tests. After giving Laface time to warm herself in the patrol car, Tfc. Campbell began to conduct the standardized field sobriety tests. He first conducted a Horizontal Gaze Nystagmus ("HGN") test. Laface showed six out of six possible clues that would indicate she was under the influence of alcohol. This was disputed by the Defendant. Tfc. Campbell then conducted the walk and turn test. He instructed Laface to walk nine steps in one direction in a straight line by placing her feet heel-to-toe while keeping her hands at her sides, and then turn around and take nine steps back. Laface took ten steps in one direction, went off the straight line, raised her hands, and failed to place her heel to her toe while walking. After turning to complete the second part of the test, Laface took thirteen steps, failed to walk in a straight line, raised her hands, and failed to walk heel-to-toe. Tfc. Campbell then attempted to conduct the one-leg stand test, but had to abort the attempt because Laface was swaying into the westbound lane. Prior to conducting the portable breathalyzer test ("PBT"), Laface stated that she would fail the test because she was small. The PBT test revealed a BAC of .23. Laface was then placed under arrest for DUI. A subsequent intoxilyzer test revealed a BAC of .21. On December 1, 2015, Laface filed this

motion to suppress any and all evidence seized in this case.

The Delaware Supreme Court has held that “any evidence recovered or derived from an illegal search and seizure” must be excluded from evidence.¹ Once a motion to suppress has been filed, the State bears the burden of proving by a preponderance of the evidence “that the challenged police conduct comported with the rights guaranteed [to the defendant] by the United States Constitution, the Delaware Constitution and Delaware statutory law.”² Thus, the State bears the burden of establishing that there was probable cause to believe the defendant was driving under the influence of alcohol before the performance of the intoxilyzer test.³ Probable cause exists “when the officer possesses information which would warrant a reasonable man in believing that a crime has been committed.”⁴ The finding of probable cause does not require proof beyond a reasonable doubt, or even that the defendant’s guilt is more likely than not. Probable cause only requires that the arresting officers “present facts which suggest, when those facts are viewed under the totality of the circumstances, that there is a fair probability that the defendant has committed a crime.”⁵

¹ *Jones v. State*, 745 A.2d 856, 872-73 (Del. 1999).

² *State v. Kang*, 2001 WL 1729126, at *3 (Del. Super. Nov. 30, 2001).

³ *Bease v. State*, 884 A.2d 495, 498 (Del. 2005).

⁴ *State v. Betts*, 2015 WL 2066602, at *1 (Del. Super. Apr. 1, 2015).

⁵ *Id.* at *5.

An automobile stop “must be justified, at its inception, by reasonable suspicion of criminal activity, and the scope of the stop must be reasonably related to the stop’s initial purpose.”⁶ The decision to stop an automobile is generally considered reasonable “when the police have probable cause to believe that a traffic violation has occurred.”⁷ Continuation of the stop beyond the initial purpose of the stop requires an officer to have reasonable and articulable suspicion based upon “specific and articulable facts, which, taken together with rational inferences from those facts, reasonably warrant th[e] intrusion.”⁸ An officer’s reasonable and articulable suspicion that a defendant may have been driving while impaired will justify the continued detention necessary to conduct field sobriety testing.

⁶ *State v. Lewis*, 2013 WL 2297031, at *2 (Del. Super. May 20, 2013) (citing *Caldwell v. State*, 780 A.2d 1037, 1046 (Del. 2001)).

⁷ *McDonald v. State*, 947 A.2d 1073, 1077 (Del. 2008).

⁸ *State v. Milianny-Ojeda*, 2004 WL 343965, at *3 (Del. Super. Feb. 18, 2004).

Factors justifying an officer's reasonable and articulable suspicion are included in the totality of the circumstances justifying a finding of probable cause. Thus, a sufficient performance on the field sobriety tests will not negate probable cause if probable cause existed prior to the tests.⁹ In *Lefebvre v. State*, the Supreme Court of Delaware held that factors giving rise to reasonable suspicion were not to be segmented from factors derived from the administration of field sobriety tests.¹⁰ In a 3-2 decision, the Court upheld a lower court finding that there was probable cause for an arrest even though the defendant had fair speech and had passed the field sobriety tests which included the alphabet, counting, and finger dexterity, one-leg stand, and walk and turn tests, and had exited her car without losing her balance.¹¹ Prior to the administration of the field tests, the defendant had been pulled over for a traffic offense, emitted a strong odor of alcohol, had a flushed face, was somewhat argumentative, admitted to drinking an hour and a half prior to the stop, and, when asked to perform the one-leg stand test, stated that "I'm not that good at this sober."¹² The majority of the Court found that factors discovered prior to the administration of the field tests outweighed the defendant's passing performance on test.¹³

In the case at bar, Laface was involved in an accident that resulted in her driving into a ditch after leaving Irish Mike's Pub. Tfc. Campbell detected a

⁹ *Lefebvre v. State*, 19 A.3d 287, 295 (Del. 2011).

¹⁰ *Id.*

¹¹ *Id.* at 290-292.

¹² *Id.* at 292.

strong odor of alcohol on her breath and her face was flush. Laface admitted that she consumed three beers and two shots before leaving the pub. She appeared to be highly emotional. Her mood varied from happy to sad. The officer claimed that she exhibited six out of six clues on the HGN test, and performed poorly on the remaining field sobriety tests. Much like the defendant's confession in *Lefebvre*, Laface stated to Tfc. Campbell that she would blow over the legal limit when asked to perform a PBT. The Court is convinced the field sobriety tests were properly performed and that Laface performed poorly on those tests. These factors overwhelmingly support a finding of probable cause to suspect that Laface had been driving while under the influence of alcohol.

Laface has argued that the field tests were either performed improperly or that her performance on the tests was diminished because she was extremely cold. However, this argument is unavailing. If Laface had performed each of the field sobriety tests properly, or if the results of the tests were to be suppressed, it would not negate other factors. As in *Lefebvre*, the factors that were present before the tests were performed and Laface's subsequent statement that she would test over the legal limit on the PBT were enough to show probable cause existed.

In this case, the Court finds that Tfc. Campbell possessed information which would warrant a reasonable man in believing that a crime has been committed and thus probable cause existed. Therefore, Laface's motion to suppress evidence resulting in her arrest is **DENIED**.

IT IS SO ORDERED.

¹³ *Id.* at 295.

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/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh
oc: Prothonotary
xc: Counsel